United States
Committee on Foreign Affairs
House of Representatives
Washington, D.C. 20515

November 29, 1982

The Honorable Gerry E. Studds
1501 Longworth House Office Building
Washington, D.C. 20515

Dear Gerry:

Thank you for your letter inquiring into the rights of the Foreign Affairs Committee under the provisions of the Intelligence Authorization Act of 1981, which you refer to as the Intelligence Oversight Act of 1980.

As you know, the Select Committee on Intelligence is the committee which has legislative jurisdiction over U.S. intelligence activities and as such is the recipient of information relating to intelligence activities and operations.

With that in mind, I shall address your questions in order.

1. As Chairman of the Foreign Affairs Committee, do you share the view expressed above by Senator Huddleston concerning the obligations of the Intelligence Committee? In particular, do you agree that a major covert operation having significant foreign policy impact is a matter which would "require the attention" of the Foreign Affairs Committee? In general, what types of intelligence-related operations and activities do you believe would ordinarily fall under the category of matters "requiring the attention" of our Committee?

My views with respect to intelligence matters which impact on foreign policy are contained in the statement which I made on the Floor during consideration of the Conference Report on the Intelligence Authorization Act of 1981. Because of the complexity of the subject the entire statement is attached for your consideration.

I did not offer an amendment to the House Rules with respect to the Foreign Affairs Committee's representation on the Select Committee as I indicated I would in my speech because the Leadership did not want to amend the Rules. It was agreed, however, to increase representation from one to two Members and Lee Hamilton was appointed to the Committee shortly after the Act became law.

TAB B

2. In what manner does the Intelligence Committee bring matters "requiring their attention" to appropriate committees of the House, and particularly, to the Committee on Foreign Affairs?

The procedures under which intelligence information is made available to other committees are established by Clause 7 (c) (1) and (2) of House Rule XLVIII Clause 7 (c) (2) reads as follows:

> (c) (1) No information in the possession of the select committee relating to the lawful intelligence or intelligence-related activities of any department or agency of the United States which has been classified under established security procedures and which the select committee, pursuant to paragraph (b) (2) of this clause, has determined should not be disclosed shall be made available to any person by a Member, officer, or employee of the House except as provided in subparagraph (2).
>
> (2) The select committee shall, under such regulations as the committee shall prescribe, make any information described in subparagraph (1) available to any other committee or any other Member of the House and permit any other Member of the House to attend any hearing of the committee which is closed to the public. Whenever the select committee makes such information available, the committee shall keep a written record showing, in the case of any particular information, which committee or which Members of the House received such information. No Member of the House who, and no committee which, receives any information under this subparagraph, shall disclose such information except in a closed session of the House.

** Thus, the decision to "bring matters requiring their attention" to other committees of the House is made by the Select Committee on Intelligence itself. The manner in which this is done is determined by the Members of the Select Committee based upon recommendations made by the Chairman of that committee.

3. Since the Intelligence Oversight Act was approved, how many times has the House Intelligence Committee brought matters "requiring the attention" of the Foreign Affairs Committee to our attention?

Since the Intelligence Authorization Act of 1981 was enacted, I do not recall any activity being brought to the attention of the Committee on Foreign Affairs as a "matter requiring the attention" of the Committee. It should be pointed out that there are two Members of the Committee on Foreign Affairs, who are also Members of the Select Committee on Intelligence and information made available to that committee is also available to them.

4. When matters of this nature are "brought to the attention" of the Foreign Affairs Committee, what is the procedure used to make that information available to Members of the Committee?

In the event that an intelligence matter which in my opinion could not be resolved except through action by the Committee on Foreign Affairs, I would discuss the matter with Lee Hamilton, as the other Member of the Committee on the Select Committee. Then, depending upon the circumstances, I would discuss the situation further with the Chairman and other Members of the Select Committee to determine how consistent with House Rules, regarding the release of intelligence information and particularly Rule 7 (c) (1) and (2) the matter could be brought to the attention of the entire Committee on Foreign Affairs for appropriate action.

Gerry, in my opinion the Select Committee on Intelligence has made every effort to insure that the intent, spirit and letter of the Intelligence Authorization Act of 1981 are adhered to by the Administration. If there are any specific instances that you would like to discuss further, I will be happy to meet with you at your convenience for this purpose.

With best wishes, I am

Sincerely yours,

Chairman

CJZ:jby

Enclosure

cc: The Honorable Edward P. Boland

The Honorable Lee H. Hamilton

for

mind, I and my fellow e agreed to accept sections of this bill which provide for sive congressional oversight intelligence activities. In this re- know there is considerable inter- n how this measure modifies the hes-Ryan amendment requirement arding executive branch reporting to ngress about CIA covert action activi- s. I, therefore, would like to take a ment to analyze what we have agreed on.

Henceforth, in extraordinary circum- nces affecting vital national inter- —the President will be allowed to r reporting to Congress on CIA rt action operations abroad. The key d here is defer. The President is not ed forever from letting us know ut such activities. This is not an ab- tion of our oversight responsibility. are just allowing him to postpone reporting in those rare instances e, for example, prior disclosure d jeopardize the lives of the person- the methods employed in a partic- covert action activity. As the con- ce report notes—

ior notice of a covert operation is not the President must fully inform the committees in a timely fashion and a statement of the reasons for not prior notice.

hat unreasonable? It seems to me onsense dictates that we allow the ent this flexibility so that he can ely discharge his constitutional sibility to conduct foreign policy. connection, let us not forget that action is an important and some- vital aspect of foreign policy and en utilized by Presidents all the ck to George Washington.

mber of my colleagues have ex- concern about how often a Presi- ght invoke the deferred report- ion provided by this measure. A the record to date is illuminating regard. Since the passage of the -Ryan amendment in 1974, there e only one known covert action not reported to Congress prior itiation. Our committee was sub- briefed on that action and that the reason for the deferred was because the President felt r notification could jeopardize of the personnel involved in that forsover, participants in this operation—which we all ap- when we became aware of it— participate in the action only assured that there would be disclosure to Congress.

aker, I believe we have arrived sible answer to a potential curity dilemma. The consti- uthorities and duties of the and legislative branches have ully balanced in a critically area of national security. In 97 is necessary legislation of

tee on Foreign Affairs, the gentleman from Wisconsin (Mr. ZABLOCKI), who serves with such distinction on this subcommittee and who was so helpful in resolving a very difficult matter, not only between the Committee on Foreign Affairs and the Permanent Select Committee on Intelligence, but also between the legislative branch and the administrative branch of our Government.

(Mr. ZABLOCKI asked and was given permission to revise and extend his remarks.)

Mr. ZABLOCKI. Mr. Speaker, I rise in strong support of S. 2597, the intelligence authorization conference report. The agreements in this report are the product of a long and dedicated effort on many difficult and complex issues. The fruitful work undertaken in this regard by the gentleman from Massachusetts, chairman of the Permanent Select Committee on Intelligence, Mr. BOLAND, and the gentleman from Virginia, ranking minority member of the Permanent Select Committee on Intelligence, Mr. ROBINSON, and the gentleman from Missouri, Mr. BURLISON, are to be commended. In addition, Senators BAYH, HUDDLESTON, and GOLDWATER, to name only a few, played a constructive role in moving this compromise through the Senate.

Surely one of the most challenging issues confronted by the conferees was the so-called Hughes-Ryan reporting requirement on covert operations. The fact that agreement has been reached on this subject is especially gratifying.

As many are well aware, I became seriously interested in this issue of prior reporting of covert operations because of my responsibility as chairman of the Committee on Foreign Affairs. The committee's oversight activities in the field of intelligence and its crucial importance to U.S. foreign policy led to extensive hearings and a committee amendment to the present Hughes-Ryan procedure.

Mr. Speaker, the amendment proposed by the Committee on Foreign Affairs made two important and essential changes. First, it reduced from eight to two the number of congressional committees required to receive reports on covert operations prior to their initiation. Second, the committee mandated that covert activities should be reported to Congress prior to the execution of the operations with a few limited and constrained exceptions.

The essentials of this Foreign Affairs Committee amendment to Hughes-Ryan are contained in the conference report before us. The legislation and accompanying report recognize that as a matter of practice covert operations should be reported prior to their initiation. At the same time, respect for the constitutional authorities of both the executive and legislative branches is recognized and the role both have to play in crafting an effective intelligence community is acknowledged.

activities, including ... The report states clearly that the Select Committees on Intelligence are to be provided full and advance information on significant anticipated intelligence activities including covert operations.

In addition, the legislation makes the fundamental recognition that in extraordinary circumstances advance information on covert operations might be withheld from the Select Committees on Intelligence, provided the President informs the committees in a timely fashion and provides a statement of the reasons for not giving prior notice.

Mr. Speaker, this recognition of the need for limited exceptions to prior reporting of covert operations is fully consistent with the Committee on Foreign Affairs amendment to Hughes-Ryan. I therefore welcome its inclusion in the conference report. Such exceptions are absolutely essential to a strong intelligence community and important for U.S. security.

Such exceptions will also help the American intelligence community to maintain the extraordinary secrecy necessary in intelligence activities and promote cooperation from the intelligence communities of friendly countries.

Because this exception provision is included in this legislation, Foreign Affairs Committee conferees in the foreign aid authorization conference committee have already agreed to remove a similar provision. This will insure that the legislation before us will be the vehicle for amending Hughes-Ryan.

In dropping the Foreign Affairs Committee amendment, I wish to assure Members of the House that my endorsement of the conference report in no way constitutes a relinquishment of the jurisdiction of the Committee on Foreign Affairs over intelligence activities relating to foreign policy. The committee fully intends to carry out its oversight responsibilities in this area.

The Committee on Foreign Affairs believes that strong congressional oversight over intelligence activities is a vital legislative responsibility. As chairman of the committee, I recognize that strong oversight over intelligence activities derives in part from its awareness that its responsibilities for overseeing U.S. foreign policy covers the totality of U.S. relationships abroad—which must include intelligence along with political, military, economic, and other activities.

I believe the Committee on Foreign Affairs can exercise its oversight responsibilities under the Rules of the House without receiving prior reports on covert activities. The committee will continue to receive the results of all information gathered on covert activities.

In addition, the committee will receive periodic briefings from the intelligence community on issues of concern, and expects full, complete, and accurate information. Furthermore, because of the committee's interest in intelligence activities as they affect foreign policy, I intend to seek a change in the Rules of

[redacted] least three.

[redacted]peaker, in the course of debate [redacted]s issue in both Houses of Congress [redacted] year, interpretations were estab[redacted]hed between the executive branch and the Senate covering exceptions to prior reporting of covert operations. These understandings were contained in a recent exchange of correspondence between Attorney General Benjamin R. Civiletti and Senator WALTER D. HUDDLESTON, chairman of the Subcommittee on Charters and Guidelines of the Senate Select Committee on Intelligence.

These understanding are fully consistent with the Foreign Affairs Committee amendment concerning extraordinary exceptions to prior reporting. They outline the intent of the Senate concerning this issue when it overwhelmingly passed S. 2284, the Intelligence Oversight Act of 1980. The entire text of S. 2284 is contained in the conference report before us. Further, I fully endorse the understandings laid out in the correspondence from the Attorney General Benjamin Civiletti and Senator WALTER HUDDLESTON and ask that they be included in the RECORD at this point.

The letter follows:

SEPTEMBER 18, 1980.

Hon. BENJAMIN R. CIVILETTI,
The Attorney General,
Washington, D.C.

DEAR MR. ATTORNEY GENERAL: It has come to my attention that concern has been expressed by some in the Executive branch regarding one statement in the legislative history of S. 2284, the Intelligence Oversight Act of 1980, as passed by the Senate on June 3 of this year. In floor debate on that bill, I engaged in a series of colloquies with Senator Javits which, to the extent that they might be inconsistent with the language of the report, would supersede such language. In response to questions relating to section 501(b), I noted that a "claim of constitutional authority is the sole ground that may be asserted for withholding prior notice of a covert operation."

This colloquy was not intended to be, and I do not regard it as being, inconsistent with the language of the star print of the Committee report in the second sentence of paragraph 6 on page 6 which states:

". . . it is recognized that in extremely rare circumstances a need to preserve essential secrecy may result in a decision not to impart certain sensitive aspects of operations or collection programs to the oversight committees in order to protect extremely sensitive intelligence sources and methods."

This explanation of the intent of the second preambular clause in section 501(a) was not superseded by the colloquy which, as Senator Javits stated, was related to section 501(b). The construction of the second preambular clause was not intended to be affected by the statement made with regard to section 501(b).

In a recent court decision [*United States* v. *American Telephone & Telegraph Co.*, 567 F.2d 121 (D.C. Cir. 1977)] the court articulated an approach that the committee believes is a sound way to deal with any differences that might arise regarding the implementation of these provisions. This case raised many issues similar to those encountered in providing for the authorities of both in minute detail, relied, we believe, on the expectation that where conflicts in scope of authority arose between the coordinate branches, a spirit of dynamic compromise would promote resolution of the dispute in the manner most likely to result in efficient functioning of our Governmental system. Under this view, the coordinate branches do not exist in an exclusively adversary relationship to one another when a conflict in authority arises. Rather, each branch should take cognizance of an implicit constitutional mandate to seek optimal accommodation through a realistic evaluation of the needs of the conflicting branches in the particular fact situation. This aspect of our constitutional scheme avoids the mischief of polarization of disputes.

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"The course of negotiations reflects something of greater moment than the mere degree to which ordinary parties are willing to compromise. Given our perception that it was a deliberate feature of the constitutional scheme to leave the allocation of powers unclear in certain situations, the resolution of conflict between the coordinate branches in these situations must be regarded as an opportunity for a constructive modus vivendi which positively promotes the functioning of our system. The Constitution contemplates such accommodation. Negotiation between the two branches should thus be viewed as a dynamic process affirmatively furthering the constitutional scheme."

I hope this explanation of the legislative history of S. 2284 will help resolve the concerns expressed to you by some in the Executive branch. Should it appear necessary, I am confident that there would be no difficulty in making this clarification of the intent of the Senate a formal part of the legislative history.

Sincerely,

WALTER D. HUDDLESTON,
Chairman, Subcommittee on Charters and Guidelines.

DEAR SENATOR HUDDLESTON: Your letter regarding the legislative history of S. 2284, the Intelligence Oversight Act of 1980, explains that the construction of the second preambular clause of section 501(a) was not intended to be affected by the statement made in your colloquy with Senator Javits relating to section 501(b). Thus, the second preambular clause may be interpreted without regard to the statement regarding section 501(b).

The Executive branch agrees with this explanation of the legislative history, and any differences that might arise should be resolved as you suggest. Therefore, it would seem appropriate to make this clarification a formal part of the legislative history.

Sincerely,

This legislative history and passage of S. 2597 should make clear the intent of Congress on the issue of prior reporting of covert operations and the parameters of exceptions to such reporting in extraordinary circumstances.

Mr. Speaker, the issue of prior reporting of covert operations has been a most difficult one to settle for all parties concerned. As such, I am gratified by the agreed position we have been able to reach on this issue. It is my hope that S. 2597 will lay the legal groundwork for effective and vigorous oversight of the intelligence community. The responsible use of intelligence must be a crit-

[redacted]ND. Mr. Speaker, I yi[redacted] 6 minutes to the distinguished gent[redacted] man from Wisconsin (Mr. ASPIN), very valuable member of the Ho[redacted] Permanent Select Committee Intelligence.

Mr. ASPIN. To understand the [redacted] Mr. Speaker, it seems to me that [redacted] bill improves the oversight process [redacted] some ways and weakens it in others. [redacted] balance, I come to the conclusion tha[redacted] does improve the oversight process, e[redacted] though it is not perfect, nor is it exa[redacted] what I would have wanted had I had [redacted] choice of writing the language mys[redacted] If I could make sure, correct me, any[redacted] the members of the committee, if I [redacted] not interpreting what is here correc[redacted] but as I understand it, the advanta[redacted] that this bill provide are, first of all, t[redacted] where before we used to cover just co[redacted] actions, at this point the language [redacted] the bill now covers at least some sen[redacted] tive collection activities.

Mr. MAZZOLI. Mr. Speaker, will [redacted] gentleman yield?

Mr. ASPIN. I would be happy to yi[redacted]

Mr. MAZZOLI. The gentleman is [redacted] actly correct. It is an addition that [redacted] made to the bill and it does go bey[redacted] current law.

Mr. ASPIN. I think that is a defi[redacted] plus in terms of oversight.

The second fact that is a plus to ov[redacted] sight is that it now applies to everyo[redacted] whereas before the Hughes-Ryan l[redacted] guage applied only to the CIA. It is [redacted] understanding that our language [redacted] applies to any other agency which mi[redacted] be called upon to do covert activity.

Mr. MAZZOLI. Mr. Speaker, will [redacted] gentleman yield?

Mr. ASPIN. I would be happy to yi[redacted]

Mr. MAZZOLI. The gentleman is [redacted] actly correct.

Mr. ASPIN. The third point and [redacted] other point is that what we now hav[redacted] specific language that prior notice [redacted] covert activities, as well as the sensi[redacted] collection activities, that prior notic[redacted] the norm. Under Hughes-Ryan, it [redacted] vague, as indeed we saw recently [redacted] Hughes-Ryan could be interpreted [redacted] the administration as meaning posi[redacted] tivity, the notification would come a[redacted] the activity in question; but what we [redacted] saying specifically in this language [redacted] is that we expect prior notification.

Mr. MAZZOLI. Mr. Speaker, will [redacted] gentleman yield?

Mr. ASPIN. I yield on that point.

Mr. MAZZOLI. The gentleman is [redacted] actly correct. The gentleman used [redacted] term "norm" and it is, indeed, the n[redacted] to have prior notice and only in the [redacted] ceptional situation would there be a [redacted] thing other than prior notice; but [redacted] tainly that is the norm and the expec[redacted] pattern which should emerge in the y[redacted] ahead.

Mr. ASPIN. I thank the gentlema[redacted]

I think those are clearly on the [redacted] side of why I think that whatever [redacted] language is, those are things that are [redacted] improvement in terms of oversi[redacted] There are a couple things that are a s[redacted]